(2)

No. 95-1576

Supreme Court, U.S.
FILED
APR 25 1996
CLERK

In The

Supreme Court of the United States

October Term, 1995

JOAN S. BORAWICK,

Petitioner,

vs.

MORRIE SHAY AND CHRISTINE SHAY,

Respondents.

On Petition for a Writ of Certiorari to the United States Court of Appeals for the Second Circuit

RESPONDENTS' BRIEF IN OPPOSITION

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8728
Lutz Appellate Services, Inc.
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28pp

QUESTION PRESENTED

1. Whether petitioner's failure to file the petition for rehearing within 14 days of the entry of judgment in the United States Court of Appeals results in a lack of jurisdiction to consider the petition for a writ of certiorari?

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Respondents request that the Court dismiss or deny the petition for writ of certiorari seeking review of an opinion of the United States Court of Appeals for the Second Circuit. The court of appeals decision is reported at 68 F.3d 597 (2d Cir. 1995), *petition for cert. filed*, 64 U.S.L.W. 3669 (U.S. April 9, 1995) (No. 95-1576). (For the convenience of the Court, all citations to the opinion will include citation to the opinion attached as Appendix 1A-32A to the petition).

STATEMENT OF JURISDICTION

Judgment entered in the United States Court of Appeals for the Second Circuit on October 17, 1995. The petition for rehearing was not timely filed within fourteen days.

The instant petition was filed on March 28, 1996, more than ninety days since the entry of judgment by the court of appeals, and the period for applying for a writ of certiorari has not been extended by a justice of this Court (28 U.S.C. § 2101(c) and Rule 13 of this Court).

STATUTES INVOLVED

28 U.S.C. § 2101(c) provides:

> **§ 2101. Supreme Court; time for appeal or certiorari; docketing; stay**
>
> (c) Any other appeal or any writ of certiorari intended to bring any judgment or decree in a civil action, suit or proceeding before the Supreme Court for review shall be taken or applied for within ninety days after the entry of such judgment or decree. A justice of the Supreme Court, for good cause shown, may extend the time for applying for a writ of

certiorari for a period not exceeding sixty days.

STATEMENT OF THE CASE

Petitioner's lengthy statement of the case contains misstatements of fact, inclusion of irrelevant matter, omissions of procedural matters and plain argument. Respondents believe the case is concisely stated in the decision of the court below. (App. to Pet. for Cert. 2A-7A; 28A-30A). In addition certain specific matters set forth in petitioner's statement should be corrected.

Respondents do not concede that petitioner has ever suffered from "traumatic psychogenic amnesia." (Pet. at 5).

Petitioner's July 1992 motion to enlarge the time to take depositions was denied without prejudice (App. 1a); it sought leave to await a ruling on a pending motion for judgment and thereafter "the parties may wish to take the depositions of out of state witnesses located as far away as California and the State of Washington." (R.__). The equivocal motion was silent concerning who the witnesses might be, why depositions were necessary or any purpose to be served.

The next motion petitioner filed regarding depositions was dated February 10, 1993, seven months after the first such motion and nearly three months after the respondents' motion *in limine* was filed. Petitioner's subjective anticipation of an "evidentiary hearing" is belied by a record which is devoid of a request to submit any evidence at a "hearing" other than the voluminous documents, briefs and deposition transcripts which both parties did submit. The assertion that the February 10, 1993 motion was never acted upon is incorrect. First, petitioner sought leave *inter alia* to depose by telephone the hypnotist Valerian St. Regis. She obtained an order granting her that specific relief and

referring expressly to the motion. *Borawick v. Shay*, 842 F. Supp. 1501, 1505, n. 7 (D. Conn. 1994). On June 7, 1993 her February 10, 1993 motion was withdrawn without prejudice to renewal. It was not "renewed" until after a recommended ruling to grant summary judgment; it was objected to, and denied.

Irrelevant matters include the reference on the first page of petitioner's statement of the case to the chronological circumstances surrounding her late father's death and inclusion of a newspaper article respecting an accident in 1973 (App. to Pet. for Cert. 67A-68A), and, with the exception of the lyrics from a song by Madonna (App. to Pet. for Cert. 65A), none of the material set forth in petitioner's appendices at pp. 49A-68A was before the court of appeals prior to the panel opinion and entry of judgment.

Petitioner's statement of the case points to no denial of any attempt or opportunity to place before the courts below any additional information regarding the qualification of petitioner's hypnotist, Valerian St. Regis.

REASONS FOR DENYING THE WRIT

I.

SINCE THE PETITION FOR REHEARING WAS NOT TIMELY FILED IN THE UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT, THERE IS NO JURISDICTION TO CONSIDER THE PETITION FOR A WRIT OF CERTIORARI SINCE IT WAS FILED AFTER JANUARY 15, 1996.

There is a lack of jurisdiction in this Court to entertain the petition for writ of certiorari since petitioner's petition for rehearing was not timely filed in the court of appeals.

Judgment entered in the court of appeals on October 17, 1995 (App. 8a). Fed. R. App. P. 36 states that "notation of a judgment in the docket constitutes entry of the judgment." Thereafter petitioner had 14 days to file a petition for rehearing since Fed. R. App. P. 40(a) states that a "petition for rehearing may be filed within 14 days after entry of judgment unless the time is shortened or enlarged by order or by local rule." Since petitioner was then filing papers other than a brief and appendices, the petition for rehearing was required to be received by the clerk of the court of appeals within the fourteen day period. Fed. R. App. P. 25(a).[1] The fourteen day period expired on October 31, 1995 and the petition for rehearing was not "received" by the clerk until November 1, 1995, and not filed until November 13, 1995 (App. 8a).

"A petition for certiorari must be filed within 90 days of the entry of the judgment below. 28 U.S.C. § 2101(c). This '90-day limit is mandatory and jurisdictional.' *Missouri v. Jenkins*, 495 U.S. 33, 45 (1990)." *Federal Election Commission v. NRA Political Victory Fund*, __ U.S. __, 115 S. Ct. 537, 539 (1994).

Supreme Court Rule 13.3 states:

> 3. The time to file a petition for a writ of

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1. Fed. R. App. P. 25(a) states:

> **(a) Filing.** A paper required or permitted to be filed in a court of appeals must be filed with the clerk. Filing may be accomplished by mail addressed to the clerk, but filing is not timely unless the clerk receives the papers within the time fixed for filing, except that briefs and appendices are treated as filed on the day of mailing if the most expeditious form of delivery by mail, except special delivery, is used.

> certiorari runs from the date of entry of the judgment or order sought to be reviewed, and not from the issuance date of the mandate (or its equivalent under local practice). But if a petition for rehearing is timely filed in the lower court by any party, the time to file the petition for a writ of certiorari for all parties (whether or not they requested rehearing or joined in the petition for rehearing) runs from the date of the denial of the petition for rehearing or, if the petition for rehearing is granted, the subsequent entry of judgment. A suggestion made to a United States court of appeals for a rehearing en banc is not a petition for rehearing within the meaning of this Rule unless so treated by the United States court of appeals.

The fact that briefs and appendices may be filed by mail is of no consequence since the only similarity between an appellate "brief" and a petition for rehearing is that by rule the latter must be produced in the same manner as the former. Fed. R. App. P. 32(b) (Form of other Papers).

Since 1942 "it has been the consistent practice of the Court to treat petitions for rehearing timely presented to the courts of appeal as tolling the start of the period in which a petition for certiorari must be sought until rehearing is denied or a new judgment is entered on the rehearing." *Missouri v. Jenkins*, 495 U.S. 33, 45 (1990). The Court's precedent and current rule both provide that such petition must be "timely" filed. The petition for rehearing was not timely filed and neither any local rule nor any order of the court of appeals extended the time for filing; petitioner's 90-day time within which to file the instant petition expired on January 15, 1996. This petition was filed well beyond

the untimeliness discussed in the dissenting opinions in *Deal v. Board of Education*, 402 U.S. 962 (1971) and *Teague v. Commissioner of Customs*, 394 U.S. 977 (1969).

The Court should dismiss the petition for writ of certiorari for want of jurisdiction.

II.

PETITIONER'S FAILURE TO SEEK REVIEW OF THE CONCLUSION OF THE DISTRICT COURT AND THE COURT OF APPEALS THAT HER HYPNOTIST WAS NOT QUALIFIED COMPLETELY UNDERMINES THE QUESTIONS PRESENTED.

As the court of appeals noted, "[t]he linchpin of the district court's ultimate decision to exclude Borawick's testimony was its finding as to the first safeguard: that St. Regis [the hypnotist] was not qualified." *Borawick v. Shay*, 68 F.3d 597, 601 (2d Cir. 1995), (App. to Pet. for Cert. 8A-9A) *citing, Borawick v. Shay*, 842 F. Supp. 1501, 1508-1509, n. 5 (D. Conn. 1994). In fact, in the court of appeals petitioner expressly asserted that "the rule of admissibility advocated by the plaintiff for anyone who has undergone therapeutic hypnosis would assume that the hypnotist was appropriately qualified. . . ." (R.__, Appellant's reply brief, No. 94-7584, August 31, 1994 at 9).

The court of appeals held, *inter alia*, that "Borawick's assertions notwithstanding, it is beyond question that St. Regis lacked adequate professional qualifications as a hypnotist." *Borawick v. Shay*, 68 F.3d at 609 (App. to Pet. for Cert. 28A). The summary of hypnosis set forth in *Rock v. Arkansas*, 483 U.S. 44 (1987) observed that "[h]ypnosis by trained physicians or psychologists has been recognized as a valid therapeutic technique since 1958. . . ." *Id.* at 60. The conclusion of the

magistrate judge, district court and court of appeals that petitioner's hypnotist was not appropriately qualified is sufficient reason to deny the petition. Petitioner's claim that this conclusion was erroneous, made in passing, is not sufficiently set forth as a precise question presented to warrant review.

The petition is replete with unsupported assertions that hypnosis does not affect memory, and multiple alleged accounts of satanic religious events, other rituals and cults. It includes irrelevant and unsupported assertions such as "[p]sychological manipulation, the misuse of hypnotic drugs and hypnosis are all conduct characteristic of ritual child abuse." (Pet. at 25).

Should this Court ever undertake to review the admissibility of hypnotically induced testimony under the Federal Rules of Evidence in a civil case, the record should, at least, include a qualified hypnotist.

III.

IF THE PETITIONER SEEKS REVIEW OF WHAT SHE AND THE COURT OF APPEALS CHARACTERIZED AS A QUESTION OF FIRST IMPRESSION, THEN NO CONFLICT PRESENTLY EXISTS AMONG THE CIRCUITS REQUIRING RESOLUTION BY THE COURT.

Petitioner argued to the court of appeals that "admissibility of testimony in a civil case by a plaintiff who previously resorted to therapeutic hypnosis was an issue of first impression for the district court and is one of first impression for this Court as well." (R.__ Appellant's appellate brief, No. 94-7584, July 22, 1994 at 24). The court of appeals stated that "[t]his case presents an issue of first impression: the circumstances under which an alleged victim of sexual abuse may testify as to memories of abuse following therapeutic hypnosis." *Borawick v. Shay*, 68 F.3d at 598. (App. to Pet. for Cert. 2A).

If petitioner and the court of appeals are correct, then no conflict among the circuits exists to warrant discretionary review by the Court.

Rock, supra, noted that hypnosis for therapeutic purposes has been recognized "since 1958," *id.* at 60, yet the court of appeals found "[t]he parties have not cited, nor are we aware of any case concerning the specific issue before us: the admissibility of testimony about memories of childhood sexual abuse that are recalled for the first time in adulthood following the use of hypnosis as part of psychotherapy." *Borawick v. Shay*, 68 F.3d at 600 (App. to Pet. for Cert. 7A-8A). If this issue has only arisen once since 1958 (and before), then it would seem to be so fact specific and rare as to justify denying the petition.

IV.

NO CONFLICT AMONG THE CIRCUITS EXISTS IN THE CASES SUBMITTED BY PETITIONER JUSTIFYING REVIEW BY THE COURT.

There is no actual conflict between the courts of appeals requiring resolution by the court. The federal cases petitioner has cited consist of thirteen from the courts of appeals and two district court decisions regarding hypnosis. Seven of the appellate decisions are habeas corpus proceedings reviewing state court criminal convictions obtained under state rules of evidence. One of two district court decisions is a habeas proceeding.

Of the remaining cases, *Wyller v. Fairchild Hill Corp*, 503 F.2d 506 (9th Cir. 1974) was decided before enactment of the Federal Rules of Evidence. *Kline v. Ford Motor Co.*, 523 F.2d 1067 (9th Cir. 1975) was docketed in 1974, *ibid.*, and the panel decision in September, 1975 refers not to the Federal Rules of

Evidence but to only the California Evidence Code. The Federal Rules of Evidence became effective on July 1, 1975. Pub. L. 93-595, §1, January 2, 1975, 88 Stat. 1926. *See, e.g., United States v. Mackey*, 405 F. Supp. 854, 856 (E.D.N.Y. 1975) (Weinstein, J.). *United States v. Miller*, 411 F.2d 825 (2d Cir. 1969) was also decided before enactment of the Federal Rules of Evidence.

The 1979 Ninth Circuit opinion in *United States v. Awkard*, 597 F.2d 667 (9th Cir. 1979) *cert. denied*, 444 U.S. 885 (1979), published some eight years before the Court's opinion in *Rock v. Arkansas*, 483 U.S. 44 (1987), acknowledged the necessity of some "procedures to be followed during hypnosis" *id.* at 669, n. 2, which if not followed could result in a pre-trial admissibility hearing before the district judge. *Ibid.*; *United States v. Adams*, 581 F.2d 193, 198-99 (9th Cir. 1978), *cert. denied*, 439 U.S. 1006 (1978).

United States v. Valdez, 722 F.2d 1196 (5th Cir. 1984), decided under the Federal Rules of Evidence, reversed the district court admission of posthypnotic identification testimony.

Petitioner's remaining circuit court decision is *Sprynczynatyk v. General Motors Corp.*, 771 F.2d 1112 (8th Cir. 1985), *cert. denied*, 475 U.S. 1046 (1986) placing the "hypnosis evidentiary problem directly within the control of the district court." *Id.* at 1123. This is the approach adopted by the district court, *Borawick v. Shay*, 842 F. Supp. at 1504, and although modified in scope, an approach consistent with the Second Circuit opinion in this case.

What has emerged over time in the cases regarding hypnotically induced testimony is, in part, exemplified by *Biskup v. McCaughtry*, 20 F.3d 245 (7th Cir. 1994), *cert. denied*, __ U.S. __ (March 18, 1996), 64 U.S.L.W. 3623 (U.S. March 19,

1996) (No. 95-975). That court acknowledged the independent authority of the State of Wisconsin to establish its own rules, subject to review for constitutional error, regarding the admissibility of post-hypnotic testimony, *id.* at 255, while suggesting that, "if one were to write on a totally clean slate with reference to this subject, there would be great appeal of the kind of *per se* rule enunciated by the Supreme Court of Arkansas in *Rock v. State*, 288 Ark. 566, 708 S.W. 2d 78 (1986) paralleling concerns as to suggestiveness in Chief Justice Rehnquist's dissent in *Rock* [483 U.S. at 62-65]." *Id.* at 254. In any event, no discernable conflict or sharp division exists among the courts of appeals on this question of federal evidence.

V.

PETITIONER'S FIFTH AND SEVENTH AMENDMENT CLAIMS ARE MERITLESS.

Petitioner presents two questions of whether "the Court of Appeals for the Second Circuit violated" her rights under the Fifth Amendment and Seventh Amendment by its "methodology." The same claims then directed at the district court, were made in the court of appeals which considered them and found "that they are meritless." (App. to Pet. for Cert. 32A). The claims now directed at the panel of the United States Court of Appeals for the Second Circuit remain meritless; notably, the petition is barren of any acknowledgement of the responsibility of the district court to resolve preliminary questions of admissibility. Fed. R. Evid. 104(a). "Judge Daly and Magistrate Judge Margolis were highly sensitive to the various concerns surrounding post-hypnotic testimony." *Borawick v. Shay*, 68 F.3d at 600. (App. to Pet. for Cert. at 8A).

Mills v. Rogers, 457 U.S. 291 (1982), instead of supporting petitioner, reflects "this Court's settled policy to avoid

unnecessary decisions of constitutional issues." Since both courts below found petitioner's hypnotist clearly unqualified, no constitutional questions need even be considered. The issue presented in *Cruzan v. Director, Mo. Dept. of Health*, 497 U.S. 261 (1990) was "whether the United States Constitution grants what is in common parlance referred to as a 'right to die' " *id.* at 277 and whether Missouri could choose "the rule of decision which it did." *Ibid.* That issue is not presented here.

Petitioner's Seventh Amendment cases are not on point; for example, *Woodell v. International Brotherhood of Electrical Workers*, 502 U.S. 93 (1991) ("petitioner was entitled to a jury trial on the LMRDA cause of action. . . ." *Id.* at 98); *Edmondson v. Leesville Concrete Co.*, 500 U.S. 614 (1991) "whether a private litigant in a civil case may use peremptory challenges to exclude jurors on account of their race." *Id.* at 616.

Petitioner's complaint that the district court failed to provide "the rape shield protection afforded by Fed. R. Evid. 412" (Pet. at 28) is meritless. Petitioner never argued in the district court that the rule might apply because it was not effective in its present form until December 1, 1994. Fed. R. Evid. 412, P.L. 103-322, § 40141, 108 Stat. 1918-1919.

None of the cases cited by petitioner lead to the conclusion that the United States Court of Appeals for the Second Circuit acted in a manner inconsistent with this Court's Fifth or Seventh Amendment jurisprudence.

CONCLUSION

The petition for writ of certiorari should be denied.

Respectfully submitted,

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APPENDIX A — ORDER

JULY 23, 1992. Civ. No. 5:92CV00033 (TFGD). DENIED without prejudice for lack of good cause shown. Counsel are reminded that pending motions do not typically justify an extension of the discovery period.

/s/ T. F. Gilroy Daly
T. F. Gilroy Daly, U.S.D.J.

APPENDIX B — GENERAL DOCKET IN THE SECOND CIRCUIT COURT OF APPEALS

GENERAL DOCKET FOR
Second Circuit Court of Appeals

Filed: 6/13/94

Court of Appeals Docket #: 94-7584
Nsuit: 4320 TORTS INJURY-Assault Slander
Borawick v. Shay, et al
Appeal from: U.S. District Court CTDC

Case type information:
1) Civil
2) Private
3) none

Lower court information:
District: 0205-05: 92-cv-33
Trial Judge: T.F. Gilroy Daly
Date Filed: 1/24/92
Date order/judgment: 5/10/94
Date NOA filed: 6/3/94

Fee status: paid

Prior cases:
None
Current cases:
None

Panel Assignment:
Panel: JMW EVG JAC Plz :Fed 12/19/94 am
Date of decision: 10/17/95

Appendix B

JOAN S. BORAWICK Plaintiff - Appellant	Helen L. McGonigle, Esq. 203-740-0074 [COR LD NTC ret] Law Office of Helen L. McGonigle, Esq. P.O. Box 326 Brookfield, CT 06804-0326
MORRIE SHAY Defendant - Appellee	Charles W. Fleischmann, Esq. 203-367-7440 [COR LD NTC ret] Gulash & Fleischmann P.O. Box 9118 350 Fairfield Ave. Bridgeport, CT 06601
CHRISTINE SHAY Defendant - Appellee	Charles W. Fleischmann, Esq. (See above) [COR LD NTC ret]

Appendix B

Official Caption 1/

Docket no.(s): 94-7584

JOAN S. BORAWICK,

Plaintiff-Appellant,

v.

MORRIE SHAY and CHRISTINE SHAY,

Defendants-Appellees.

Authorized Abbreviated Caption 2/

Docket no.(s): 94-7584

BORAWICK V. SHAY

1/ Fed. R. App. P. Rule 12(a) and 32(a).
2/ For use on correspondence and motions only.

Appendix B

6/13/94	Copy of district court docket entries and notice of appeal on behalf of Appellant Joan S. Borawick filed. [94-7584] Form C due on 6/13/94. Form D due on 6/13/94. (cot)
6/13/94	Appellant Joan S. Borawick Form C filed, with proof of service on 6/9/94. [94-7584] Form C deadline satisfied. (cot)
6/13/94	Appellant Joan S. Borawick Form D filed. [94-7584] Form D deadline satisfied. (cot)
6/23/94	Scheduling order #1 filed. Record on appeal due on 7/18/94. Appellant's brief and appendix due on 7/25/94. Appellee's brief due on 8/24/94. Argument as early as week of 9/12/94. (Pre-Argument Conference scheduled for 7/7/94 @ 12:15p[illegible]). (com)
7/11/94	Appellant Joan S. Borawick motion for leave to file oversized brief of 67 pages FILED (w/pfs). [538645-1] (rsk)
7/12/94	Order FILED GRANTING motion for leave to file oversized brief [538645-1] by Appellant Joan S. Borawick, endorsed on motion form dated 7/11/94. Order Signed by SAB. (onk)
7/22/94	Appellant Joan S. Borawick brief FILED with proof of service. (com)

Appendix B

7/22/94	Appellant Joan S. Borawick joint appendix filed w/pfs. Number of volumes: 5. NOTE- Vol 2 is sealed. (com)
7/22/94	Appellant Joan S. Borawick sealed appendix filed w/pfs. Number of volumes: 1. (com)
7/26/94	Notice of appearance form on behalf of Helen L. McGonigle, Esq., received. (Orig. to Calendar) (cma)
7/26/94	Notice of appearance form on behalf of Charles W. Fleischmann, Esq., received. (Orig. to Calendar) (cma)
8/1/94	Record on appeal index in lieu of record filed. (ono)
8/10/94	Letter dated August 10, 1994 submitted by Helen L. McGonigle received. Re: Missing Page #48 Within Appellant's Brief filed on July 22, 1994. (onk)
8/19/94	Appellees' Morrie Shay and Christine Shay brief filed with proof of service. SERVICE EFFECTED BY PERSONAL DELIVERY ON AUGUST 19, 1994. (onk)
9/1/94	Appellant Joan S. Borawick reply brief filed with proof of service. (onk)
11/4/94	Proposed for argument the week of 12/19/94. USCthse 2:00 P.M. (ca92)

Appendix B

11/4/94	Letter received from Charles W. Fleischmann notifying the Court that he is unavailable for oral argument 12/5 - 12/6. (cv71)
11/21/94	Set for argument on 12/19/94. [94-7584] AT 2:00PM in the USCthse. (ca92)
12/19/94	Case heard before VAN GRAAFEILAND, WALKER, CABRANES, C.JJ (TAPE: 100) (ca92)
8/24/95	Letter dated 8/22/95 submitted by Helen L. McGonigle received. Re: Supplemental Record. [Forwarded To Panel] (cv74)
8/25/95	Record on appeal after index filed. (4 vols) (cv70)
9/18/95	Letter sent to Appellant Joan S. Borawick's counsel stating: The panel that heard the above-captioned case wishes to inform you that your request to supplement the record is too informal to warrant action. (GLIII) (cv70)
9/22/95	Letter dated 9/21/95 submitted by Helen L. McGonigle received. Re: Response To Letter Dated 9/18/95 In Reference To Record On Appeal. [Forwarded To Panel] (cv74)
9/26/95	FIRST SUPPLEMENT to the Record on appeal after index filed. (cv74)

Appendix B

10/17/95	Judgment of the district court is AFFIRMED by published signed opinion filed. (JMW) (cv70)
10/17/95	Judgment filed. (cv70)
10/25/95	Note: The OPINION PRICE is $6.40 (rek)
10/27/95	Appellee's Christine Shay and Morrie Shay itemized and verified bill of costs received. [Forwarded To AA] (cv74)
10/30/95	Appellee's Christine Shay and Morrie Shay statement of costs taxed in the amount of $281.20 filed. (cv74)
11/1/95	Appellant Joan S. Borawick petition for rehearing received. Problem: Motion Required For Additional Papers Attached To Petition; Contacted Atty. (cv74)
11/8/95	Appellant Joan S. Borawick motion for permission to file addendum to petition for rehearing FILED (w/pfs). [721120-1] [Forwarded to AA] (cv74)
11/13/95	Order FILED GRANTING motion for permission to file addendum to petition for rehearing [721120-1] by Appellant Joan S. Borawick, endorsed on motion form dated 11/8/95. [Per JAC] (cv74)

Appendix B

11/13/95	Appellant Joan S. Borawick Petition for rehearing and with suggestion for rehearing in banc [722211-2] with proof of service filed. (cv74)
11/14/95	Response and Opposition from Appellees' Christine Shay and Morrie Shay received. (cv74)
11/14/95	Response and Opposition of the appellees returned to Appellee's Christine Shay and Morrie Shay. [Motion Previously Decided] (cv74)
12/29/95	Order FILED DENYING petition for REHEARING and with suggestion for rehearing in banc [722211-2] by Appellant Joan S. Borawick. [Per BJM] (cv74)
1/5/96	Judgment MANDATE ISSUED. (cv74)
2/2/96	Mandate receipt returned from the district court. (ren)

A TRUE COPY
GEORGE LANGE III, CLERK
BY /s/ Carolyn Clark Campbell
Chief Deputy Clerk

Docket as of April 4, 1996